

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
BOROUGH OF UPPER SADDLE RIVER,
KAREN MILLER, ROY OSTROM, MARIA FLORIO,
MARK RUFFOLO AND LINDA MCDONALD,

07 CIV 0109 (MDF)

Plaintiffs,

-against-

VILLAGE OF AIRMONT, ROCKLAND COUNTY
SEWER DISTRICT #1,

Defendants.

-----X

STATE OF NEW YORK)
) ss:
COUNTY OF ROCKLAND)

MICHAEL K. BURKE, ESQ., being duly sworn, deposes and says:

1. I am a member of BURKE, MIELE & GOLDEN, LLP, attorneys for Plaintiffs, Borough of Upper Saddle River, Karen Miller, Roy Ostrom, Maria Florio, Mark Ruffolo and Linda McDonald (hereafter "Plaintiffs"), in the above-entitled matter.

2. Annexed hereto are the following exhibits:

"A" – Notice to Sue for Unpermitted and Illegal Discharges under the Clean Water Act letter served by mail (certified mail, return receipt requested) upon the following: Village of Airmont, Board of Trustees; Stephen L. Johnson, Administrator, U. S. Environmental Protection Agency; New Jersey Department of Environmental Protection; Rockland County Sewer District No. 1 (a/k/a the "District"); and New York Department of Environmental Conservation dated March 6, 2006.

“B” – Notice to Sue for Unpermitted Illegal Discharges under the Clean Water Act letter served by mail (certified mail, return receipt requested) upon the following: Village of Airmont, Board of Trustees; Stephen L. Johnson, Administrator, U. S. Environmental Protection Agency; New Jersey Department of Environmental Protection; Rockland County Sewer District No. 1; and New York Department of Environmental Conservation dated October 6, 2006.

Dated: June 5, 2007
Goshen, New York

BURKE, MIELE & GOLDEN, LLP



Michael K. Burke (7564)

Attorneys for Plaintiffs

100 Washington Street

Post Office Box 397

Suffern, New York 10901

(845) 357-7500

BURKE, MIELE & GOLDEN, LLP

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PATRICK T. BURKE
ROBERT M. MIELE *
RICHARD B. GOLDEN
MICHAEL K. BURKE

ROCKLAND COUNTY OFFICE:

100 WASHINGTON AVENUE

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PHYLLIS A. INGRAM **
ALEXANDER X. SAUNDERS***
F. MICHELE COOPER
DENNIS J. MAHONEY, III

REPLY TO: ☒ ORANGE CO.
☐ ROCKLAND CO.

Respond to Post Office Box

JOSEPH P. MCGLINN (1941-2000)

* ADMITTED IN NEW YORK & NEW JERSEY
** ADMITTED IN NEW YORK & CONNECTICUT
*** ADMITTED IN NEW YORK, NEW JERSEY &
WEST VIRGINIA

March 6, 2006

Village of Airmont
Board of Trustees
P.O. Box 578
321 Route 59
Airmont, New York 10982

Rockland County Sewer District No. 1
4 Route 340
Orangeburg, New York 10962
Attn: Julius Graifman, Chairman

Stephen L. Johnson, Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Ave., N.W.
Washington, DC 20460

New York Dept. of Environ. Conservation
Division of Water
Sandra L. Allen, Director
625 Broadway
Albany, New York 12233

New Jersey Department of Environmental Protection
Division of Water Quality
401 East State St.
P.O. Box 029
Trenton, New Jersey 08625

Re: Notice to Sue for Unpermitted and Illegal Discharges under Clean Water Act

Greetings:

We represent the Borough of Upper Saddle River, New Jersey. This letter is to advise you that we are authorized to provide you with this Notice of Intent to Sue the Village of Airmont, New York, and the Rockland County Sewer District No. 1, on behalf of Upper Saddle River, New Jersey, and other potential citizen plaintiffs within the Village of Airmont and Upper Saddle River, for illegal and unpermitted discharges by the Village of Airmont and Rockland County Sewer District No. 1 into the Saddle River, a federally protected waterway. This Notice is sent pursuant to 33 U.S.C. § 1365.

Enclosed please find evidence of prior unpermitted and illegal discharges which are continuing unabated, [and which are destined to increase if additional new development in the Village of Airmont is allowed to be connected to the Rockland County Sewer District No. 1. At a minimum, such additional new connections cannot be allowed to occur until all necessary curative measures have been accomplished to prevent such unpermitted and illegal discharges.] Unless the Village of Airmont and Rockland County Sewer District No. 1 agree to a reasonable plan to remediate and prevent the damage that their illegal conduct has occasioned, we are authorized to file suit in the Southern District of New York federal court at the end of the statutorily required notice period.

Please feel free to have your attorney contact me regarding any questions in this regard.

Very truly yours,


Richard B. Golden

Cc: NYSDEC Region 3
21 South Putt Corners
New Paltz, New York 12561 (w/ enc.)

NYSDEC Region 3
200 White Plains Rd, 5th Floor
Tarrytown, New York 10591 (w/ enc.)

Hon. Kenneth A. Gabbert, Mayor
Borough of Upper Saddle River
376 West Saddle River Rd.
Upper Saddle River, New Jersey 07458

Robert T. Regan, Esq.
P.O. Box 214
345 Kinderkamack Rd.
Westwood, New Jersey 07675

New York State DEC Spill File, List of actions & Resident Records Rockland County Sewer District No. 1

Basic List from DEC Summary list as of 1/25/06

Shaded - Additional from Resident Reports

Bold face; additional spills in Spill Data Base

Spill No.	Spill Date	File Detail Memo	Description of event	Principal Reason	Est. Spill Gallons	Receiving Watercourse
	2/11/2000	Resident Records	SSO MH 10010 Ramapo Interceptor	?	100,000	Saddle River
	7/25/2000	Resident Records	SSO Saddle River Pump Station, MH 10171 & 10172 & Swim/Tennis Club Locker Rm	?	1200	1/3 (400 gal) to Saddle River
	8/16/2000	Resident Records	SSO Saddle river Pump Sta. MH 10171 & 10172, Parking Lot	?	800	Contained
	12/6/2000	Resident Records	SSO Saddle river Pump Sta. MH 10171 & 10172, Parking Lot	?	5000	1200 gals to Saddle River
	3/30/2001	Yetter to Delo 4/5/01	SS MH 10172 & 10174 Saddle River PS	Pump Failure	8,400	
01-05716	8/27/2001	Phillips to Rudolph 8/29/01	Pump Station Overflow at Saddle River PS, Saddle River Rd.	Check Valve Failure	2,000	Saddle River
02-00460	4/13/2001	Yetter to Delo 4/18/02	Pump Station Overflow at Twin Lakes PS, Monsey	Check Valve Failure	30,000	Saddle River
	8/3/2002	Swim Club File	Saddle River Swim & Tennis Club	Rain ??	?	Saddle River
Except as Noted, Items Below from DEC List of Spills Being Included in Action against RCSD #1 by DEC						
03-02500	6/9/2003	RCSD #1 Yetter to Delo 6/12/03	SSO MH 10178, Hillside Avenue	Blockage	< 1,000	None Reported
03-05151	8/14/2003	RCSD #1 Philipps to Delo 8/14/03	SSO MH 10172, Saddle River Pump Station	Power Failure	400	Contained
	8/12/2003	Swim Club File	Flood Pump House & Bathrooms, Saddle River Swim & Tennis Club	Rain ??	?	Saddle River
	9/1/2003	Swim Club File	SSO Bathrooms & Parking Lot; Saddle River Swim & Tennis Club	Rain ??	?	Saddle River
03-10538	12/12/2003	RCSD #1 Yetter to Delo 12/17/03	SSO MH 14008, Strawtown Road	Rain, Frozen, Snowmelt	10,000	
			SSO MH 1074 & 6038A, Lawrence Street	Rain, Frozen, Snowmelt		
			SSO MH 10019, South Monsey Road	Rain, Frozen, Snowmelt & Ramapo Trunk Cleaned		
03-10980	12/23/2003 Data 12/24/03	RCSD #1 Yetter to Delo 12/26/03	SSO MH 14008, Strawtown Road SSO MH 1074 & 6038A, Lawrence Street SSO MH 10019, South Monsey Road SSO MH 16002, 16003, 16065, Jeffrey Court	Rain	30,000	No Discharge Info

	12/29/2003	Resident File	SSO MH 25471, West Street			Saddle River
	8/25/2004	Swim Club File	SSO MH (100197), South Monsey Road SSO in Parking Lot; Saddle River Swim & Tennis Club	Rain ?? Rain ??	? ?	Saddle River
	9/5/2004	Swim Club File	SSO in Bathrooms; Saddle River Swim & Tennis Club	Rain ??	?	Saddle River
04-06737	9/18/2004	RCSD #1 Yetter to Philipps 9/24/04	SSO MH 16004, 14005, 16006, Jeffrey Court	Rain	19,000	Lake DeForest
04-06739			SSO MH 22005, 22119, Old Route 304 & Shadybrook Lane	Pump Failure	6,000	Lake DeForest
			SSO MH 6222 & 6037A, Pascack Road	Rain	2,400	Pascack Brook
04-06738			SSO MH 10019, South Monsey Road	Rain	4,000	Saddle River
			SSO MH 1779, Parking Lot BMW Dealership	Rain	5,000	Pascack Brook
05-00080	4/2/2005		Raw Sewage - Saddle River Rd Pump Sta.			Soil
	4/3/2005	RCSD #1 Yetter to Philipps 4/7/05	MH 10019 South Monsey Rd, Monsey		4,500	Saddle River
	4/4/2005	RCSD #1 Yetter to Philipps 4/7/05	SSO MH 10172 & 10174 Saddle River Road, Monsey	Heavy Rain	5,000	Saddle River
05-00626	4/14/2005	DEC Internal Email	SSO MH 10434, Saddle River Rd, Monsey	Heavy Rain	3,500	Saddle River
05-06893	9/6/2005	RCSD#1 Memo	Wet Well OF 421 Spook Rock Road Pump Sta	Pump Failure	100	?
05-08194	10/9/2005		SSO at Requa Lane	Blockage/Grease	500	Saddle River
			Raw Sewage - South Monsey Rd, Ramapo			Soil
05-08347	10/12/2005		Raw Sewage - South Monsey Rd, Ramapo		0	In Sewer
05-10280	11/30/2005	Yetter, RCS	SSO at Saddle River Pump Station	Equipment Failure	10,000	
			Total Discharge		307,050	

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PHYLLIS A. INGRAM **
DENNIS J. MAHONEY, III
F. MICHELE COOPER

REPLY TO: ☐ ORANGE CO.
☐ ROCKLAND CO.

JOSEPH P. MCGLINN (1941-2000)

Respond to Post Office Box

* ADMITTED IN NEW YORK & NEW JERSEY
** ADMITTED IN NEW YORK & CONNECTICUT

October 6, 2006

Village of Airmont
Board of Trustees
P.O. Box 578
321 Route 59
Airmont, New York 10982

Rockland County Sewer District No. 1
4 Route 340
Orangeburg, New York 10962
Attn: Julius Graifman, Chairman

Stephen L. Johnson, Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

New York Dept. of Environ. Conservation
Division of Water
Sandra L. Allen, Director
625 Broadway
Albany, New York 12233

New Jersey Department of Environmental Protection
Division of Water Quality
401 East State St.
P.O. Box 029
Trenton, New Jersey 08625

Re: Notice to Sue for Unpermitted Illegal Discharges under Clean Water Act

Greetings:

We represent the Borough of Upper Saddle River, New Jersey. This letter is to advise you that we are authorized to provide you with this Notice of Intent to Sue the Village of Airmont, New York, and the Rockland County Sewer District No. 1, ("RCSD #1") on behalf of Upper Saddle River, New Jersey, and other potential citizen plaintiffs within the Village of Airmont and Upper Saddle River, for unpermitted, illegal, and continuous discharges by the Village of Airmont and Rockland County Sewer District No. 1 into the Saddle River, a federally protected waterway. This Notice is sent pursuant to 33 U.S.C. § 1365.

We hereby place you on notice, pursuant to §§ 505(a) and (b) of the Clean Water Act, ("CWA") 33 U.S.C. §§1365(a) and (b), that we intend to sue the Village of Airmont and the RCSD #1 for violating, and continuing to violate, effluent standards and limitations as defined by § 505(f) of the CWA, 33 U.S.C. § 1365(f), by discharging pollutants into waters of the United States without a permit as is required under CWA §301(a), 33 U.S.C. §1311(a).

The CWA prohibits the discharge of pollutants from a point source to the waters of the United States except pursuant to and in compliance with a permit.¹ See, 33 U.S.C. § 1311(a); 33 U.S.C. § 1342. The Act defines "pollutant" to include solid waste, biological materials, and sewerage. 33 U.S.C. § 1362(6). "Point source" is defined as "any discernable, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure...from which pollutants are or may be discharged." 33 U.S.C. § 1362(14).

We believe that the raw sewerage discharged by the Village and RCSD #1 from the locations attached contains the following pollutants: biological material and other organic matter exerting chemical and biological oxygen demand in the waters; fecal coliform bacteria; nutrients, including nitrogen and phosphorous; settleable, suspended and dissolved solids, including toilet paper and sewerage solids; salts; metals; solid waste; pathogens; disinfectants (such as permanganate); feminine products; and other materials. These discharges have resulted in the presence in the waters of distinctly visible floating or settleable solids, suspended solids, deposits of sludge and silt, bad odors, materials harmful to aquatic life, distinctly visible color, and other conditions that alter the integrity of such waters.

One of the following sites that are discharging pollutants from point sources into the waters of the United State without SPDES permits:

Raw sewerage discharges from a manhole at or adjacent to 64 Cherry Lane on dates including but not limited to:

August 23, 2006	August 29, 2006
August 24, 2006	August 30, 2006
August 25, 2006	September 1, 2006
August 26, 2006	September 2, 2006
August 27, 2006	September 3, 2006
August 28, 2006	

¹ The State of New York is the delegated authority by the Environmental Protection Agency to administer the National Pollution Discharge Elimination System ("NPDES") permit program pursuant to 33 U.S.C. section 1342(b).1370. The state Department of Environmental Conservation administers the State Pollution Discharge Elimination System ("SPDES") permit program to carry out the functional equivalent of SPDES responsibilities.

The RCSD #1 operates a sewerage under a SPDES permit. Upon information and belief, the discharges described herein are not covered or are in violation of this or any other permit.

Our investigations have revealed that at a minimum 2.5 million gallons raw sewerage discharged and flowed into the Saddle River. During both wet and dry weather, raw sewerage has been discharged illegally on a regular basis. No SPDES permit exists allowing for this discharge.

Unless the discharges are addressed and corrected, these discharges will continue in the future. These discharges and the RCSD #1 failure to obtain new permits or modify the existing SPDES permit constitute ongoing violations of the CWA. Each day of unpermitted discharges comprises a series of separate violation of the CWA, with a discrete violation for each pollutant illegally discharged from each point source. As provided by 33 U.S.C. § 1319(d) and 40 C.F.R. §19.4 violators are subject to a civil penalty not to exceed \$27, 500 (or \$31,500 for violations occurring after August 19, 2002) for each such violation. At the close of the 60 day notice period, we intend to file a citizen suit under §505(a) of the Clean Water Act against the Village and RCSD #1 as owner and operator of the above-referenced point sources to seek injunctive relief from and penalties for the violations discussed herein. This notice of intent to sue covers all CWA violations during the proceeding five (5) years preceeding the date of this letter, and all future violations arising from the above referenced point source or points sources in the vicinity.

The May 10, 2006 Consent Order, purporting to address such problems, is wholly ineffective. It does not adequately provide a remedy for the continuing discharges that are occurring in the Village of Airmont and flowing into the Saddle River.

Enclosed please find evidence of prior illegal discharges without permit which are continuing unabated, and which are destined to increase if additional new development in the Village of Airmont is allowed to be connected to the Rockland County Sewer District No. 1. At a minimum, such additional new connections cannot be allowed to occur until all necessary curative measures have been accomplished to prevent such unpermitted and illegal discharges. We are authorized to file suit in the Southern District of New York federal court at the end of the statutorily required notice period.

Please feel free to have your attorney contact me regarding any questions in this regard.

Very truly yours

 RICHARD B. GOLDEN

Cc: NYSDEC Region 3
 21 South Putt Corners
 New Paltz, New York 12561 (w/ enc.)

NYSDEC Region 3
 200 White Plains Rd, 5th Floor

Tarrytown, New York 10591 (w/ enc.)

Hon. Kenneth A. Gabbert, Mayor
Borough of Upper Saddle River
376 West Saddle River Rd.
Upper Saddle River, New Jersey 07458

Robert T. Regan, Esq.
P.O. Box 214
345 Kinderkamack Rd.
Westwood, New Jersey 07675



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Spill Record

Administrative Information

DEC Region: 3
Spill Number: 0606130

Spill Date/Time

Spill Date: 08/28/2006 **Spill Time:** 12:00 PM
Call Received Date: 08/28/2006 **Call Received Time:**
03:00 PM

Location

Spill Name: WOODED AREA
Address: 64 CHERRY LANE
City: AIRMONT **County:** Rockland

Spill Description

Material Spilled:
RAW SEWAGE

Amount Spilled:
Gal.

Cause: Vandalism

Source: Institutional, Educational, Gov., Other

Resource Affected: Surface Water

Waterbody: CREEK

Record Close

Date Spill Closed: Not closed

If you have questions about this reported incident, please contact the Regional Office where the incident occurred.

Other Links of Interest

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Spill Record

Administrative Information

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Spill Number: 0606130

Spill Date/Time

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Location

Spill Name: WOODED AREA
Address: 64 CHERRY LANE
City: AIRMONT **County:** Rockland

Spill Description

Material Spilled:	Amount Spilled:
RAW SEWAGE	Gal.

Cause: Vandalism

Source: Institutional, Educational, Gov., Other
Resource Affected: Surface Water
Waterbody: CREEK

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Date Spill Closed: Not closed

If you have questions about this reported incident, please contact the Regional Office where the incident occurred.

Other Links of Interest

[Information about the Spill Response and Remediation Program](#)
[Phone Numbers for Spill Response and Remediation](#)

**New York State DEC Spill File, List of actions & Resident Records
Rockland County Sewer District No. 1**

DEC Spill Incident Database 6/1 to 8/15/2006

Spill No.	Spill Date	File Detail Memo	Description of event	Principal Reason	Est. Spill Gallons	Receiving Watercourse
602398	6/2/2006		MH 22 Adams Drive Stony Point	?	?	Sewer - ?
602718	6/10/2006		Washington Ave & Jackson Ave New Square	Equipment Failure	4000	
602760	6/11/2006		Shoulder of Road Route 306 Spring Valley	Human error	500	Soil
603418	6/28/2006		Nyack Pump Station Spear Street	Other	?	Soil
604449	7/19/2006		Sewer MH Suffern Lane, Haverstraw	Equipment Failure	800	Sewer - ?
604511	7/21/2006		Sewer MH Suffron Lane/Madison Ave, Haverstraw	Other	200	Minisceongo
604681	7/25/2006		Washington Ave & Jackson Ave Ramapo	Other	1000	
605304	8/5/2006		Easement South Pascack Rd, Ramapo	Other	500	

http://www.dec.state.ny.us/cdmx/extapps/derfol/spills/results.cfm

Spill number	Date spill reported	Spill name	County	City/town	Address
1. <u>0605604</u>	08/14/2006	BARBA RESIDENCE	Rockland	PALASADES	35 HIGHLAND AVE
2. <u>0605664</u>	08/15/2006	JOE NERETICH TIRE CORP.	Rockland	SPRING VALLEY	53 UNION RD.
3. <u>0605665</u>	08/15/2006	STONY BROOK RIVER	Rockland	SLOATSBURG	SEVEN LAKES DR./WASH. AVE
4. <u>0605693</u>	08/16/2006	ORANGE & ROCKLAND CENTER	Rockland	SPRING VALLEY	390 WEST ROUTE 59
5. <u>0605705</u>	08/16/2006	GETTY 174	Rockland	STONE POINT	44 LIBERTY DRIVE SOUTH
6. <u>0605706</u>	08/16/2006	GETTY 101	Rockland	VALLEY COTTAGE	221 ROUTE 303
7. <u>0605707</u>	08/16/2006	GETTY 322	Rockland	VALLEY COTTAGE	34 ROUTE 303
8. <u>0605782</u>	08/18/2006	ERICH RESIDENCE	Rockland	NYACK	21 HAVEN COURT
9. <u>0605785</u>	08/18/2006	OFF THE ROADWAY	Rockland	SUFFREN	25 OLD MILL ROAD
10. <u>0605834</u>	08/21/2006	ROADWAY	Rockland	ORANBURGH	MOUNTAIN AVE/WESTERN

http://www.dec.state.ny.us/cdmx/extapps/derfol/spills/results.cfm

15 results found

Spill number	Date spill reported	Spill name	County	City/town	Address
11. <u>0605864</u>	08/21/2006	NEXT TO RIVER	Rockland	STONY POINT	RIVER ROAD AND 5TH AVE
12. <u>0605895</u>	08/22/2006	EXXON MOBILE	Rockland	MANUET	275 RT 59 EAST
13. <u>0606004</u>	08/24/2006	ROCKLAND CTY WASTE	Rockland	HILLBURN	50 BALER BLVD
14. <u>0606012</u>	08/24/2006	MIRANT	Rockland	TOMPKINS COVE	37 ELM STREET
15. <u>0606036</u>	08/25/2006	ON ROADWAY	Rockland	NYACK	6TH AVE/NORTH BROADWAY